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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDERICK RANNEL BOLDEN,

Defendant and Appellant.

G038374

(Super. Ct. No. 06WF0473)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John D. Conley, Judge. Affirmed.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lynne McGinnis and Kelley Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

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Frederick Rannel Bolden appeals from the judgment entered following a jury trial that resulted in his conviction of conspiracy to commit robbery (Pen. Code,

§§ 182, subd. (a)(1), 211, 212, 212.5, subd. (a))<sup>1</sup>, street terrorism (§ 186.22, subd. (a)), evading a police officer (Veh. Code, § 2800.2), and unlawful taking of a vehicle. (Veh. Code, § 10851, subd. (a).) The jury acquitted him of a charge of receiving stolen property under Penal Code section 496, subdivision (a). With the exception of the street terrorism count, all counts were enhanced under section 186.22, subdivision (b)(1)(A) as crimes committed for the benefit of a criminal street gang, and Bolden admitted he had two prior “strike” convictions for purposes of the “Three Strikes” law. (§§ 667, subds. (d)-(e)(2)(A), 1170.12, subds. (b)-(c).) The trial court sentenced Bolden to an indeterminate term of 25 years to life for conspiracy to commit robbery and imposed concurrent indeterminate terms of 25 years to life for street terrorism, evading a police officer, and unlawful taking of a vehicle. The court struck the gang enhancements for sentencing purposes.

Bolden argues the trial court erred by admitting evidence of a photographic lineup shown to a police officer who witnessed the group’s getaway and by excluding expert testimony on the psychological factors affecting eyewitness identification. We find no error with respect to the court’s admission of evidence regarding the photographic lineup. The court’s exclusion of expert testimony on the psychological factors affecting eyewitness identification is harmless beyond a reasonable doubt even assuming error. Consequently, the judgment is affirmed.

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

# I

## FACTS

In the early morning hours of October 4, 2003, Florentino Perez's 1982 Oldsmobile was stolen from the front of his Gardena, California home. Later that morning, Rex Hickok and his son drove to the Wells Fargo Bank branch on Seal Beach Boulevard in Seal Beach. As he walked into the bank, Hickok noticed that an Oldsmobile parked in a nearby parking space, then backed out of this space, drove all the way around the bank's parking lot, and then backed into a different parking spot. Hickok thought this activity was suspicious. He noted that it was approximately 10:00 a.m. on a Saturday and traffic was light. He also noticed that the occupants of the Oldsmobile did not exit the car after it had been parked, nor did he hear any conversation or music coming from the car. Hickok believed the car's occupants might be casing the bank in preparation for a robbery and decided to call 911.

Seal Beach Police Officer Al Cabrera responded to Hickok's 911 emergency call in a marked patrol car, and another police officer, Officer Serna, arrived on a motorcycle. When the officers met in the parking lot, Officer Serna drove around an adjacent building and approached the bank from the opposite direction of Cabrera's patrol car. Serna radioed the dispatch operator that he had seen a car matching the description of the suspect car driving down one of the parking aisles. Cabrera then saw the Oldsmobile turn to leave the parking lot on the side opposite to his entry. He estimated that the car was traveling at between 20 and 25 miles per hour through the parking lot, and he saw the car make a right turn onto a street without making a complete stop at a red light. At approximately the same time, the dispatcher informed Cabrera via radio that the Oldsmobile had been reported stolen.

Cabrera immediately initiated a pursuit and activated his overhead lights and siren. The Oldsmobile accelerated and a high-speed chase ensued. Cabrera had seen only the driver's head before activating his light and siren. However, when the pursuit

started, he saw two more heads “pop up” in the car. During the pursuit, the driver of the Oldsmobile ran a red light and failed to stop at a stop sign. When the car turned into the parking area for a condominium complex, which had only one driveway for entry and exit, Cabrera knew the car was trapped. The Oldsmobile driver lost control of the car and spun 180 degrees before colliding head-on with Cabrera’s patrol car. Cabrera saw the driver and front passenger before the collision, but the driver blocked his view of the rear seat passenger.

Cabrera jumped out of his car in anticipation of a gun battle. He ran to the back of his patrol car and took cover behind the car’s trunk. Serna dropped his motorcycle and joined him. Both officers saw three African-American males leap out of the Oldsmobile and attempt to flee the scene. Cabrera got a quick look at all three occupants of the Oldsmobile as they exited the car. He described the front passenger, who was later identified as Bolden, as being an African-American male, approximately five feet four inches tall with a medium build and either cornrows or dreadlocks hairstyle, and wearing a gray sweatshirt. He described the driver as a tall, African-American male, wearing a black nylon cap and blue sweat suit. The rear seat passenger was also an African-American male. Cabrera described him as being of medium height and build with a cornrow hairstyle and wearing a dark hooded sweatshirt.

Serna chased the driver while Cabrera pursued the passengers. Serna apprehended the driver, but Cabrera lost the passengers when they ran between two condominium buildings. The driver was identified as Sylvester Watson. Moments later, Cabrera received a radio call informing him that a second suspect, Malik Findley, had been apprehended. Cabrera identified Findley as the rear seat passenger, and he identified both men as former occupants of the Oldsmobile.

Cabrera returned to the crash site to secure the cars and the crime scene. After the Oldsmobile was towed to the Seal Beach Police Department, a specialist in crime scene evidence collection, his trainee, and a detective collected and analyzed

various items found in the car. They found a flat tip screwdriver on the floorboard of the driver's seat, an item frequently used by car thieves to activate a car's ignition system. In the center console, they found a ski mask with eye or mouth holes cut into it and a pillow case, another ski mask with eye or mouth holes and a pair of gardening gloves in the front seat passenger area, and a third ski mask with eye or mouth holes, a plastic tub filled with water, and a utility knife in the rear seat passenger's area. The investigator testified that the ski masks, gloves, water and utility knife are items that are frequently used to commit bank robberies.<sup>2</sup>

The three ski masks were subjected to DNA<sup>3</sup> testing because they revealed traces of bodily fluids. Slavco Arosovski, a forensic scientist with the Orange County Sheriff's Crime Lab, testified that Watson's DNA "matched" that found on the ski mask located in the front seat passenger's area with the possibility of a random match occurring once in one trillion people. He also stated that Findley's DNA was consistent with that of a second contributor to the same ski mask although a "match" was not made. Arosovski concluded Bolden was the major DNA contributor to the ski mask found in the rear seat passenger area and a minor contributor of the DNA found on another mask. However, this testing occurred approximately one year later, and Arosovski testified that handling or speaking over an item can result in trace elements of DNA being placed on an item. Arosovski was unable to determine the identity of the minor contributor on the third mask.

Once Bolden's DNA matched DNA samples collected from two of the ski masks, Detective Darrell Hardin compiled a six-pack photographic lineup containing Bolden's picture and the pictures of five other individuals who were similar in appearance and facial structure. Eighteen months after the incident, Cabrera selected Bolden's photograph from a six-pack photographic lineup. Cabrera was 75 percent

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<sup>2</sup> It is not uncommon for robbers to use water as a way of diffusing anti-theft dye devices employed by banks.

<sup>3</sup> DNA is a common abbreviation used to denote deoxyribonucleic acid.

certain of his identification. Cabrera recognized Bolden's eyes, but he was concerned because Bolden's hairstyle had changed in the 18 months since the incident. Nevertheless, Cabrera stated Bolden's eyes were a characteristic of the suspect that had left a lasting impression in his memory.

Another officer testified as an expert in gang behavior, customs and characteristics. This expert testified that Bolden, Findley, and Watson were self-admitted, active members of the "Four Trey Four Deuce" or "Four Trey Gangster Crips" criminal street gang on the date of this incident. He opined that Bolden, whose gang moniker was "Criccet" and Findley, whose nickname was "Tiny Criccet," probably had a close relationship based on their shared nickname. The expert also testified that bank robberies are a common crime committed by "Crips" gangs, but only by very experienced members because of the enhanced prestige awarded to gangsters who successfully commit them, and he opined that this attempted robbery was committed for the benefit of, and in association with the Four Trey Gangster Crips criminal street gang.

## II

### DISCUSSION

#### a. Admission of the Photographic Lineup

Bolden contends the photographic lineup compiled by Detective Hardin was unduly suggestive and unreliable and therefore inadmissible. Because the prosecution relied on Cabrera's identification at trial, Bolden characterizes the admission of this evidence as a denial of his right to due process and reversible error. Review of a trial court's denial of a motion to exclude pretrial photographic identification involves a mixed question of fact and law. Thus, it requires an independent review by this court. (See *People v. Kennedy* (2005) 36 Cal.4th 595, 609.) The test to admit such evidence is whether the procedure was unduly suggestive and unreliable under the totality of circumstances. (See *People v. Gordon* (1990) 50 Cal.3d 1223, 1242, overruled on

another point in *People v. Edwards* (1991) 54 Cal.3d 787, 835; see also *Manson v. Braithwaite* (1977) 432 U.S. 98, 104-114.)

During the pretrial Evidence Code section 402 hearing, Detective Hardin testified that he compiled the photographic lineup using a computer program that collects similar looking subjects from photographs contained in databases belonging to the Department of Justice and the Department of Motor Vehicles. He obtained Bolden's photograph from the Department of Justice's database. The other five photographs came from the Department of Motor Vehicles' database. The photographs obtained from these agencies differ somewhat; (1) the Department of Justice uses a light-blue background color while the Department of Motor Vehicles uses varying shades of gray; (2) the head size and placement varies slightly depending on which agency takes the photograph. Here, Bolden's photograph has a blue background and his head is somewhat larger than the other five photographs, which have slightly smaller heads and varying shades of gray as their background color.<sup>4</sup>

Cabrera testified to the facts leading to his identification of Bolden from the photographic lineup. He stated that over a year after the incident, he was told to see Hardin for the purpose of viewing a photographic lineup. When Cabrera entered Hardin's office, Hardin handed Cabrera a six-pack photographic lineup and told him that they had apprehended a potential suspect. Hardin told Cabrera to carefully look at the photographs, "and if [he] recognized anyone, to indicate who it was," but Hardin did not give Cabrera the standard admonishment that is given to lay witnesses who view photographic lineups. Cabrera was unconcerned by Hardin's failure to give the standard admonishment because he himself had "given the admonishment to potential witnesses" before. Cabrera explained the purpose of the admonishment, "That it's just as important

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<sup>4</sup> Hardin admitted that he could have obtained all six pictures from the Department of Justice, although he was unaware of any rule requiring him to use pictures with the same background color and proportions. According to Hardin's testimony, his main concern was obtaining five photographs of similar-looking individuals, or men with similar facial features. .

to free innocent people of suspicion as it is to . . . convict persons who are guilty of a crime. To set the innocent free.”

Cabrera testified that he looked at the photographic lineup for about 15 seconds before he selected Bolden’s photograph. He explained that he had not noticed the background color of the photographs at the time, and he testified, “Looking at all six photos the eyes — I just recognized the eyes. They stood out and in my mind, my mind told me it’s number five.” Cabrera further stated that he was focused on the facial features and hair of the individuals pictured, not the background color of the photographs or the individual’s clothing. Moreover, Hardin did not tell him about the DNA results until after he identified Bolden.

Bolden also introduced the testimony of Dr. Robert Shomer, a licensed psychologist with a specialty in eyewitness identification. Dr. Shomer described the field as one that explains “[t]he various processes that go into seeing someone, remembering them, and the procedure used to obtain a valid, accurate identification.” Shomer testified that he had been qualified as an expert witness in numerous courts in California and 14 other states and that he had been testifying for over 30 years. Shomer explained the factors involved in eyewitness identifications, including the fact that people are not cameras and often unaware of the factors that have influenced the identification procedure, such as the effects of passage of time and length of observation. Shomer testified that eyewitness identification has proven to be the least reliable means of identification currently available.

Given a hypothetical based on the facts of Cabrera’s identification of Bolden from the six-pack compiled by Hardin, Shomer testified Cabrera’s initial observation of Bolden would have been influenced by the life threatening situation he faced and the fact that he had multiple faces to observe and remember. Shomer testified that Cabrera’s identification could have been influenced by the cross-racial effect of identifying someone outside your own ethnic or racial group, and he discounted



Cabrera's assertion that he paid particular attention to the driver and front seat passenger because they had wide eyes in anticipation of their imminent collision with him.

In addition, Shomer questioned the reliability of this particular array of photographs, noting that the array suffered from a "sore thumb" effect, or the effect caused when one picture is "much more different" from the others. In fact, Shomer agreed with defense counsel's characterization of the array compiled by Hardin as one of the most suggestive he had ever seen in his professional career. Shomer opined that such an array would be "suggestive" and "unreliable," and that any identification derived from this array some 18 months after the fact and with knowledge that a suspect had been arrested would yield an unfair and unreliable result.

The trial court agreed that the photograph with the blue background "sure stands out," but found this to be the only obviously distinguishable characteristic of the photograph. The court further noted that this difference alone was insufficient to demonstrate an unduly suggestive lineup. Other factors highlighted by the defense, i.e., the relative placement of the photographs, the lapse of time between the incident and identification, the emotional factors cited by Shomer, and other empirical data on which Shomer relied, were not dispositive to the court. In fact, the court noted that Shomer "seemed like an advocate" and had over stated the importance of certain factors. The court denied the motion because, as the court determined, the defense failed to meet its burden of proof to show that the lineup was unduly suggestive and unnecessary. We agree with the trial court's determination.

"Generally, a pretrial procedure will only be deemed unfair if it suggests in advance of a witness's identification the identity of the person suspected by the police. [Citation.] However, there is no requirement that a defendant in a lineup, either in person or by photo, be surrounded by others nearly identical in appearance. [Citation.] Nor is the validity of a photographic lineup considered unconstitutional simply where one

suspect's photograph is much more distinguishable from the others in the lineup.

[Citations.]" (*People v. Brandon* (1995) 32 Cal.App.4th 1033, 1052.)

In light of the above authorities, we see no constitutional infirmity in a photographic lineup containing the suspect's picture surrounded by pictures of other individuals with a similar appearance but different background colors. (Cf. *People v. Cunningham* (2001) 25 Cal.4th 926, 990 [fact that only the defendant's photograph had three features noted by witnesses did not render lineup impermissibly suggestive].) In *People v. Carlos* (2006) 138 Cal.App.4th 907, the photographic lineup included Carlos' picture with his name and an identification number printed below it while the other five photographs had no labeling near them at all. The only circumstantial evidence connecting him to the crime was that a jacket was found in Carlos' home that generally matched the one worn by the robber, and a latent fingerprint was found on the outside of the cash register that was matched to him. ((*Id.* at p. 909.) Moreover, and perhaps most importantly, none of the witnesses identified Carlos at trial, leaving only the pretrial identification to connect him with the crime. And the prosecutor failed to provide a copy of this lineup to the defense until the day the trial commenced. All of these circumstances joined to persuade the reviewing court that due process had been denied. (*Id.* at p. 912.) However, none of these circumstances are present in the case before us.

Bolden argues a blue background when compared to backgrounds of varying shades of gray, and slight differences in head size, render Cabrera's identification of him from the photographic lineup unconstitutional. But "differences in background color and image size among the various photographs [do not] render the lineup impermissibly suggestive." (*People v. Johnson* (1992) 3 Cal.4th 1183, 1217; see also *People v. Holt* (1972) 28 Cal.App.3d 343, 349-350, overruled on other grounds in *Evans v. Superior Court* (1974) 11 Cal.3d 617, 625, fn. 6.) A pretrial identification procedure violates due process *if* it suggests in advance the identity of the person to be selected by the witness. (See *People v. Brandon*, *supra*, 32 Cal.App.4th at p. 1052.) This lineup did

not. As the trial court characterized it, the photographs selected for the array may not have been perfectly similar to a scientific specificity, but that is not required for the lineup to pass the test of reliability.

The pertinent point made by the trial court — and by Cabrera in describing his identification of Bolden at the pretrial lineup — was that the six individuals in the lineup looked similar. Nevertheless, Cabrera recognized in the photograph the same eyes that he remembered from the incident. His confidence did not come from the color of the background or that the head of the subject touched the top of the photograph whereas the other subjects' heads did not. It came from the facial characteristic that had been most impressive during the encounter.

Nevertheless, assuming the lineup's admission was error, it was harmless beyond any reasonable doubt. (Cf. *People v. Dominick* (1986) 182 Cal.App.3d 1174, 1197 [citing *Chapman v. California* (1967) 386 U.S. 18, 24 as standard for identification evidence error].) The photographic lineup was *not* the sole identifying evidence connecting Bolden to the crime. The DNA evidence was the first and strongest evidence linking Bolden to two of the three robbers' masks and thus, to the attempted robbery. Cabrera's initial description of the third man matched that of Bolden, thus corroborating the connection later made by the DNA evidence. Finally, Bolden was an active member of the same street gang to which Watson and Findley admittedly belonged, and was particularly connected with Findley as indicated by their similar gang monikers. The gang expert testified that when gang members have similar or shared nicknames, it means they "grew up together, were blood relatives . . . or were real close . . . in some way." As the attempted robbery was committed for the benefit of that gang, that link further cemented the identification made by the DNA "match."

#### b. Exclusion of the Expert on Eyewitness Identification

The prosecution moved pretrial to exclude Shomer's expert testimony at trial. After the Evidence Code section 402 hearing, the court determined Cabrera's

identification was substantially corroborated by the DNA evidence, by evidence that Bolden, Findley, and Watson were members of the same criminal street gang, and because each factor touched on by Shomer's pretrial testimony was adequately addressed in standard jury instructions.<sup>5</sup>

Bolden contends the trial court violated established state evidentiary rules and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. However, as the Attorney General emphasizes, Bolden's trial counsel failed to object to the exclusion of Shomer's testimony on federal constitutional grounds, arguing repeatedly that the evidence was admissible based on state evidentiary rules. Generally, the failure to object waives the argument on appeal. (See *People v. Panah* (2005) 35 Cal.4th 395, 436.) Bolden concedes the point, but contends any waiver of the issue amounts to ineffective assistance of counsel. We therefore address the merits of his state and federal claims.

Evidentiary rulings, such as whether to admit the testimony of an eyewitness identification expert, "remain[] primarily a matter within the trial court's discretion." (*People v. McDonald* (1984) 37 Cal.3d 351, 377, overruled on another point in *People v. Mendoza* (2000) 23 Cal.4th 896, 914.) Bolden argues the court's exclusion of expert testimony describing the psychological factors shown to affect the accuracy of

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<sup>5</sup> The trial court instructed the jury by reading a modified version of CALCRIM No. 315, which provided that the jurors had "heard eyewitness testimony identifying the defendant. As with any other witness, you must decide whether an eyewitness gave truthful and accurate testimony. [¶] In evaluating identification testimony, consider the following questions: [¶] Did the witness know or have contact with the defendant before the event? [¶] How well could the witness see the perpetrator? [¶] What were the circumstances affecting the witness's ability to observe, such as lighting, weather conditions, obstructions, distance, and duration of observation? [¶] How closely was the witness paying attention? [¶] Did the witness give a description and how does the description compare to the defendant? [¶] How much time passed between the event and the time when the witness identified the defendant? [¶] Was the witness asked to pick the perpetrator out of a group? [¶] Did the witness ever fail to identify the defendant? [¶] Did the witness ever change his or her mind about the identification? [¶] How certain was the witness when he or she made an identification? [¶] Are the witness and the defendant of different races? [¶] Were there any other circumstances affecting the witness's ability to make an accurate identification? [¶] Was the witness able to identify other participants in the crime? [¶] Was the witness able to identify the defendant in a fair photographic lineup? [¶] If an admonition was given prior to the lineup, was *it* fair? [¶] The People have the burden of proving beyond a reasonable doubt that it was the defendant who committed the crime. If the People have not met this burden, you must find that the defendant not guilty." (CALCRIM No. 315, as given.)

such identifications when there is nothing to corroborate an eyewitness's identification of a subject, and particularly when the identification crosses racial lines, amounts to reversible error.

“A trial court must be careful not to permit its proper concern with the expeditious conduct of the trial to lead to an improper acceleration of the proceedings. [Citation.] Nonetheless, we do not agree that the rulings or comments of the trial court . . . demonstrate that the trial court improperly conducted the proceedings by precluding the development of evidence favorable to the defense. [¶] In general, the “[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant’s right to present a defense.” [Citations.]’ [Citations.]” (*People v. Cunningham, supra*, 25 Cal.4th at p. 998.)

As the trial court noted, Bolden mischaracterizes the strength of the prosecution’s corroborating evidence. Generally, when substantial corroboration of the identification is provided, there is no abuse of discretion in excluding the expert testimony. (E.g., *People v. Sanders* (1995) 11 Cal.4th 475, 508-510; see *People v. McDonald, supra*, 37 Cal.3d at p. 377.) Again, the strongest evidence against Bolden was the DNA evidence found on two of the three ski masks. This evidence was discovered before Cabrera made his identification from a photographic lineup, and it stands on its own merit. Although not conclusive evidence of guilt, the presence of Bolden’s DNA on two items frequently used in bank robberies and the many other items used in bank robberies, and his ties to the Malik and Findley are strong independent evidence of Bolden’s guilt. In addition, the prosecution’s gang expert testified that Bolden was an active member of the Four Trey Gangster Crips gang, as was Malik and Findley, and that this gang commits robbery and attempted robbery as part of its primary activities. The expert also testified that when two gang members have similar names it generally means a strong tie between them. Further, as the trial court noted, standard jury instructions do address several issues covered by Shomer’s expert testimony. And,

defense counsel incorporated these instructions into his vigorous cross-examination of Hardin and Cabrera and into his closing argument. Thus, there was no error in the exclusion of Shomer's testimony.

Bolden's federal Constitutional arguments center on the guarantee of his right to present a defense. He contends the trial court deprived him a full opportunity to present his defense, rendering the trial fundamentally unfair. A defendant's constitutional right to present a defense is constitutionally guaranteed, but it must comply with normal evidentiary limitations. (See *Michigan v. Lucas* (1991) 500 U.S. 145, 149; *People v. Cunningham, supra*, 25 Cal.4th at pp. 998-999.) In this case, not only did the jury hear all the factors appropriate to use in its evaluation of the eyewitness identification via instruction, but Cabrera's identification from the lineup — as well as Hardin's methodology in conducting it — was vigorously attacked in cross-examination and argument. In this case, Bolden received a full and reasonable opportunity to present his defense of mistaken identity.

Bolden replies that if the state evidentiary rules barred him from presenting Shomer's testimony, then it must be in conflict with federal constitutional guarantees. Citing *Holmes v. South Carolina* (2006) 547 U.S. 319, he argues that a criminal defendant must be allowed the full opportunity to present his defense without exclusion on state evidentiary grounds. We disagree.

In *Holmes*, the United States Supreme Court struck down South Carolina's judicially created rule of evidence that prohibited defense evidence of third party culpability *if* "the prosecution has introduced forensic evidence that, if believed, strongly supports a guilty verdict." (*Holmes v. South Carolina, supra*, 547 U.S. at p. 321.) In other words, a defendant could defend by casting suspicion on another's possible guilt but only if by doing so, his own innocence of the charge was established first. The Supreme Court noted that "[s]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." [Citations.] (*Id.*

at p. 324.) However, that latitude is not so broad as to include restrictions which are ““arbitrary” or “disproportionate to the purposes they are designed to serve.”” (*Ibid.*) Prohibiting the introduction of statements made by another person *admitting to the commission of the crime* was just such an arbitrary or disproportionate response violative of constitutional guarantees. (*Id.* at pp. 330-331.)

None of the *Holmes*’ inequities are present here. The jury heard, through the court’s own instruction, of the various ways in which eyewitness identification evidence must be questioned and evaluated. It also heard thorough cross-examination and argument addressing all the reasons the defense found to discredit Cabrera’s pretrial identification. Consequently, the court’s exclusion of Shomer as an expert on this topic did not result in the total exclusion of the contents of his testimony.

More importantly, this type of attack on the *McDonald* approach to admission of such expert testimony has been specifically rejected in *People v. Goodwillie* (2007) 147 Cal.App.4th 695, 728-730. Goodwillie, like Bolden, relied on mistaken identification as his defense and also desired to present the testimony of an expert on the psychological limitations of such evidence. Relying on *Holmes v. South Carolina, supra*, Goodwillie argued he was denied his constitutional rights to a full opportunity to defend against the charges. That argument was rejected, based on the same factual reasons we have already noted here. (*People v. Goodwillie, supra*, 147 Cal.App.4th at pp. 725-730.) The *Goodwillie* court reviewed the very same factors noted above and concluded an eyewitness identification expert’s testimony is not — in quality or quantity — the same evidence as was impermissibly excluded in *Holmes*. This conclusion is one with which we agree. The jury heard via instruction the very factors it could use to evaluate Cabrera’s identification. It also heard Bolden’s arguments, which counsel made in the most vehement terms, that such evidence was poorly obtained and improperly handled. Thus, Shomer’s testimony was not required to ensure Bolden received a fair trial.

III  
DISPOSITION

The judgment is affirmed.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

ARONSON, J.